

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
COMMITTEE REPORT**

1350 Pennsylvania Avenue, N.W., Suite 404, Washington, D.C. 20004

2018 SEP 26 PM 4:12
OFFICE OF THE
SECRETARY

TO: All Councilmembers

FROM: Councilmember Anita Bonds
Chairperson, Committee on Housing and Neighborhood Revitalization

DATE: September 24, 2018 *AMB*

SUBJECT: Report on B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2018"

The Committee on Housing and Neighborhood Revitalization, to which B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017" (renamed by the Committee the "Rental Housing Affordability Re-establishment Amendment Act of 2018") was referred, reports **favorably** on this legislation and recommends its approval by the Council of the District of Columbia.

SUMMARY OF CONTENTS

I. PURPOSE AND EFFECT	2
II. LEGISLATIVE CHRONOLOGY	3
III. POSITION OF THE EXECUTIVE.....	3
IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS.....	4
V. SUMMARY OF TESTIMONY.....	4
VI. IMPACT ON EXISTING LAW	5
VII. FISCAL IMPACT.....	5
VIII. SECTION-BY-SECTION ANALYSIS.....	6
IX. COMMITTEE ACTION	6
X. ATTACHMENTS	7

I. PURPOSE AND EFFECT

The purpose of B22-0570 is to reset baseline rents of units no longer exempt from the Rent Stabilization Program due to the end of a tenant-based subsidy (the subsidy likely increasing the rent to market rates), to an amount based on annual rent increases that would have accrued under the Rental Housing Act of 1985 ("RHA") during the period of exemption, plus a single vacancy increase.

Background

The Rental Housing Act of 1985 protects the affordability of approximately 80,000+ units. For most tenants, maximum annual increases are based on the current Consumer Price Index (CPI-W) plus 2%, but not more than 10%. For the elderly or tenants with a disability, the maximum annual increase is the lesser of the CPI-W or the Social Security COLA, but not more than 5%.

However, despite the extensive coverage of the RHA, some types of units are exempt from rent control, including for example units in housing accommodations that are either federally or District-owned or -subsidized, units owned by housing providers who rent four or fewer units, certain rental units in a building owned by a cooperative housing association, buildings built after 1975, and certain other categories of rental units. A government subsidized unit typically rents at a market rate rent (regardless of what the rent control rent for the unit would have been).

Committee Reasoning

The Committee has discovered a serious problem occurs when a unit that was previously exempt from rent control due to a tenant receiving a government subsidy becomes subject to rent control upon the end of the exemption. Current law provides tenant subsidies of up to 175% of HUD's Fair Market Rent. This policy encourages housing providers to rent to tenants with subsidies; however, as a result of the subsidies these units are often rented at market rates and are therefore no longer affordable to tenants without subsidies. Whenever a housing provider decides to no longer rent to subsidized tenants, the housing provider is then allowed to rent the unit at the most recent subsidized rent, *effectively at market rates*. This policy makes the unit a "rent control" unit in name only. Not only does this loophole in rent control laws allow a housing provider to effectively bypass the rent stabilization procedures of the RHA, it has the unintended consequence of encouraging housing providers to cease to rent to government-subsidized tenants once a unit's rent has risen to market rates.

This bill changes the method used to determine the rents of previously exempt units once they re-enter rent control. The methodology begins with the unit's rent *on the day before the unit became exempt*, and then adds the total of all annual rent control increases that would have accrued during the exemption period. (This methodology borrows from how current law determines the rents of units in a building owned by a cooperative housing association that for one reason or another has lost its exemption from rent control.) Finally, a single vacancy increase may be added to the equation to arrive at the final rent the housing provider may charge the next non-subsidized tenant.

This new approach gives housing providers a much greater incentive to continue to rent to tenants with subsidies, as only when they rent to subsidy holders would they be able to continue to charge the higher, market rate rents associated with the subsidy. If the housing provider chooses to rent to a tenant who does not have a subsidy, then the rent is lowered to the amount governed by rent

control, thereby preserving rent stabilization and the affordability intent of the Rental Housing Act of 1985. Finally, this bill helps to keep rents more affordable (under rent control) for tenants who are only receiving short-term subsidies, and who then hope to take over payment of the rent for the unit after the subsidy ends.

Committee Recommendation

For the reasons explained above, the Committee recommends approval of B22-0570.

II. LEGISLATIVE CHRONOLOGY

November 7, 2017	B22-0570 is introduced by Councilmembers Anita Bonds and Brianne Nadeau.
November 7, 2017	B22-0570 is referred to the Committee on Housing and Neighborhood Revitalization.
November 10, 2017	Notice of Intent to Act on B22-0570 is published in the <i>District of Columbia Register</i> .
December 1, 2017	Notice of Public Hearing on B22-0570 is published in the <i>District of Columbia Register</i> .
December 18, 2017	The Committee on Housing and Neighborhood Revitalization holds a Public Hearing on B22-0570.
September 24, 2018	The Committee on Housing and Neighborhood Revitalization marks-up B22-0570.

III. POSITION OF THE EXECUTIVE

The Executive testified on B22-0570 as follows:

Polly Donaldson, Director, Department of Housing and Community Development, stated that the bill changes how rent levels are reset at the end of a tenant-based housing subsidy for units in the rent control housing stock. By calculating the rent based on the standard adjustment that would have occurred in the absence of the subsidy, the bill achieves the following goals: 1. maintaining the integrity and continuity of the rent stabilization regime; and 2. to the extent the subsidized rent was higher, the bill may encourage more housing providers to continue to seek to fill their accommodations with assisted households after a previous tenant-based housing subsidy tenancy ends. She further stated that the intent of this change better aligns with the purposes of the Act and the subsidy programs.

However, Ms. Donaldson was concerned that the term “tenant-based housing subsidy” was not sufficiently clear. She recommended that the bill should also account for units whose rents were always set at the subsidy level or otherwise have no rent history on file with the Rental

Accommodations Division (RAD) that could be used for calculating the standard adjustment that would have occurred in the absence of the subsidy.

Johanna Shreve, Chief Tenant Advocate, Office of the Tenant Advocate, testified on Bill 22-0570 as follows:

Ms. Shreve stated that she supported the measure as it would help to preserve affordability by effectively lowering the new base rent for a significant category of units upon reverting to rent control and eliminating a housing provider's incentive to discontinue renting the unit to a subsidized tenant. Ms. Shreve also urged the Committee to carefully assess each type of building-wide subsidy program, and to consider extending the bill's coverage as appropriate.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee on Housing and Neighborhood Revitalization did not receive testimony or comments from any Advisory Neighborhood Commissions on B22-0570.

V. SUMMARY OF TESTIMONY

The Committee on Housing and Neighborhood Revitalization held a public hearing on B22-0570 on December 18, 2017. The hearing testimony summarized below reflects opinions based upon the introduced version. A copy of the witness list is attached to this report; the video recording of the hearings (available online at http://oct.dc.gov/services/on_demand_video/channel_13.asp) is incorporated by reference. A copy of submitted testimony is part of the hearing record and is available through the Office of the Secretary.

The following witnesses testified at the hearing:

Beth Mellen Harrison, *Supervising Attorney, Housing Law Unit, The Legal Aid Society of the District of Columbia*, testified in strong support of the bill. Ms. Harrison stated that the bill changes the formula for the rent that a housing provider may charge when a tenant with a subsidy leaves a unit and the rent control exemption ends. She also stated that the new rent control level would now be calculated starting with the prior rent control level and then adding all annual CPI rent increases that have gone into effect in the intervening period. This change will remove the potential loophole while ensuring that housing providers still have strong incentives to increase their rental income by bringing in voucher holders.

Joshua Baker, *William C Smith, Inc.*, expressed concerns with the bill. Mr. Baker suggested that the Committee convene a working group comprised of DCHA, tenant advocates and housing providers to discuss the important policy. Mr. Baker stated that the bill seeks to continue encouraging housing providers to accept housing choice vouchers and the revised methodology will only discourage the practice. Mr. Baker also stated that the current rental payments were developed by DCHA to maximize housing assistance payments and increase affordable housing in low poverty and minority concentration areas.

Scott Bruton, *Vice President, Housing Policy, Coalition for Nonprofit Housing and Economic Development*, testified in support of the bill. Mr. Bruton stated that the policy of exempting tenant-based subsidy units from rent control encourages housing providers to rent to tenants with a subsidy; however, current law bases the rent of a previously exempt unit that “re-enters” rent control on the most recent rent charged for the unit. Mr. Bruton also stated that due to higher rates paid by government subsidies, rents have risen to market rate during exempt periods allowing the housing provider to bypass the rent stabilization procedures of the RHA. Mr. Bruton also suggested that the bill would help keep rents more affordable for tenants who are only receiving short-term subsidies, such as Rapid Rehousing, and then are faced with taking over payment of the unit’s rent after the subsidy ends.

Rob Wohl, *Manager Affordable Housing Program, Latino Economic Development Center*, testified in support of the bill stating that the legislation will help preserve affordable housing in a city that is not gaining affordable housing but instead losing it.

Conrad Bennett, *DC Association of REALTORS*, testified that many in the housing community do not know how the voucher program works. Mr. Bennett states that the application and recertification processes have become so cumbersome that those who wish to provide housing to those in need are unable to work through DCHA paperwork, inspections, and related timelines. Mr. Bennett also stated that many owners and property managers who are already familiar with the process are sometimes unable to successfully place residents through DCHA and housing choice voucher program.

Zulfekar Ansar Bey, *Public Witness*, testified about the sufferings of indigenous people.

VI. IMPACT ON EXISTING LAW

The proposed bill amends the Rental Housing Act of 1985, effective September 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.09), to reset baseline rents of units no longer exempt from the Rent Stabilization Program due to the end of a subsidy, to the lowest of either an amount based on the adjustments of general applicability that accrued during the period of exemption, 100% of the Small Area Fair Market Rent for the Washington-Arlington-Alexandria Metropolitan area, or the average rent charged during the last 6 consecutive months of the exemption.

VII. FISCAL IMPACT

On March 13, 2018, the Chief Financial Officer, Jeff DeWitt, concluded that funds are not sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill will have no cost in fiscal year 2018, but would reduce District revenues by \$10,000 in fiscal year 2019 and \$231,000 over the four-year budget and financial plan.

VIII. SECTION-BY-SECTION ANALYSIS

- Section 1 States the short title of B22-0570.
- Section 2 Resets baseline rents of units no longer exempt from the Rent Stabilization Program due to the end of a tenant-based subsidy, to an amount based on annual rent increases that would have accrued under the Rental Housing Act of 1985 during the period of exemption, plus a single vacancy increase.
- Section 3 Requires that the bill would apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.
- Section 4 Provides the fiscal impact statement.
- Section 5 Provides the effective date.

IX. COMMITTEE ACTION

On September 24, 2018, the Committee on Housing and Neighborhood Revitalization held an Additional Meeting to consider and mark-up B22-0570. The meeting was called to order at 10:10 a.m. A quorum was present, which included Chairperson Bonds and Councilmembers Nadeau and Silverman. Chairperson Bonds provided an opening statement summarizing the provisions of the proposed resolution.

Chairperson Bonds then moved two amendments to the Committee Print that procedurally made the bill easier to implement. The first amendment simplified the procedure to ensure that there would be a record on file with the Rent Administrator of the previous exempted rent along with the new rent calculation. The new language eliminated the extra step that would be created by the 30-day requirement, and only requires a new registration upon the re-renting of the unit. The second amendment provided another opportunity for the housing provider to demonstrate the rent charged of the unit on the day the unit became exempt.

Chairperson Bonds then moved for approval of B22-0570 and opened the floor for discussion. With no discussion, Chairperson Bonds then moved for approval of the Committee Print and Report for B22-0570, with leave for staff to make technical and conforming amendments.

Committee members voted as follows:

Committee members voting in favor:

Chairperson Bonds and Councilmembers Nadeau and Silverman

Committee members voting against:

Committee members voting present:

Committee members absent:

Councilmembers Robert C. White, Jr., and Trayon White, Sr.

The meeting was adjourned at 10:27 a.m.

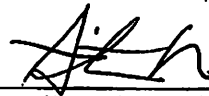
X. ATTACHMENTS

- A. B22-0570 as Introduced
- B. Secretary's Memo
- C. Public Hearing Notice
- D. Agenda and Witness list
- E. Public/Executive Testimony
- F. Fiscal Impact Statement
- G. Legal Sufficiency Determination
- H. Comparative Redline for B22-0570 with Committee Print
- I. Amendments

ATTACHMENT A

1 

2 Councilmember Brianne K. Nadeau



Councilmember Anita Bonds

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9 A BILL

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12
13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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15
16
17 To amend the Rental Housing Act of 1985 to reset baseline rents of units no longer
18 exempt from the Rent Stabilization Program due to the end of a tenant-based
19 subsidy, to an amount based on the adjustments of general applicability that
20 accrued during the period of exemption.

21
22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
23 act may be cited as the "Rental Housing Affordability Re-establishment Amendment Act of
24 2017".

25 Sec. 2. Section 209(c) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C.
26 Law 6-10; D.C. Official Code § 42-3502.09(c)), is amended by striking the phrase "The rent
27 charged for any rental unit exempted under section 205(a)(5)" and inserting the phrase "The rent
28 charged for any rental unit in a housing accommodation exempt pursuant to section 205(a)(1) for
29 any tenant-based subsidy, or by section 205(a)(5)," in its place.

30 Sec. 3. Fiscal impact statement.

31 The Council adopts the fiscal impact statement in the committee report as the
32 fiscal impact statement required by section 4a of the General Legislative Procedures Act
33 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

34 Sec. 4. Effective date.

35 This act shall take effect following approval by the Mayor (or in the event of veto
36 by the Mayor, action by the Council to override the veto), a 30-day period of
37 congressional review as provided in section 602(c)(1) of the District of Columbia Home
38 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
39 206.02(c)(1)), and publication in the District of Columbia Register.

ATTACHMENT B

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From :  Nyasha Smith, Secretary to the Council

Date : November 08, 2017

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, November 7, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Rental Housing Affordability Re-establishment Amendment Act of 2017", B22-0570

INTRODUCED BY: Councilmembers Bonds and Nadeau

The Chairman is referring this legislation to the Committee on Housing and Neighborhood Revitalization .

Attachment

cc: General Counsel
Budget Director
Legislative Services

ATTACHMENT C

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004**

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION**

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE

on

B22-0441, the Rental Housing Registration Update Amendment Act of 2017,

B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2017,

and

B22-0442, the Rental Unit Fee Adjustment Amendment Act of 2017

on

**Monday, December 18, 2017, at 2:00 p.m.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

On Monday, December 18, 2017, Councilmember Anita Bonds, Chairperson of the Committee on Housing & Neighborhood Revitalization, will hold a public hearing on B22-0441, the Rental Housing Registration Update Amendment Act of 2017, B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2017, and B22-0442, the Rental Unit Fee Adjustment Amendment Act of 2017. The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 2:00 p.m.

The purpose of B22-0441, the Rental Housing Registration Update Amendment Act of 2017, is to update the registrations of rent control housing accommodations to provide data on the number, composition, viability, and affordability of the District's rent control housing stock, and to require that the registration statements be available for public inspection online on the web portal of the Department of Housing and Community Development.

The purpose of B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2017, is to reset baseline rents of units no longer exempt from the Rent Stabilization Program due to the end of a tenant-based subsidy, to an amount based on the adjustments of general applicability that accrued during the period of exemption.

The purpose of B22-0442, the Rental Unit Fee Adjustment Amendment Act of 2017, is to increase the Rental Unit Fee for rental apartments in the District from \$25 to \$30, in order to provide sufficient revenue to fund L21-239, the Elderly Tenant and Tenant with a Disability Protection Amendment Act

of 2016 (effective April 7, 2017). L21-239 establishes critical rental protections for all elderly and tenants with a disability, and also provides financial supports for low-income elderly tenants and low-income tenants with a disability facing rent increases resulting housing provider petitions.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8198, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on December 15, 2017. Persons wishing to testify are encouraged to **submit 15 copies of written testimony**. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Neighborhood Revitalization, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on January 2, 2018.

ATTACHMENT D

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
AGENDA/WITNESS LIST
1350 Pennsylvania Avenue, NW, Washington, DC 20004**

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION
ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE**

on

**B22-0441, the Rental Housing Registration Update Amendment Act of 2017,
B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2017,**

and

B22-0442, the Rental Unit Fee Adjustment Amendment Act of 2017

on

**Monday, December 18, 2017, at 2:00 p.m.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

**I. CALL TO ORDER
II. OPENING REMARKS
III. WITNESS TESTIMONY**

A. Public Witness

- | | |
|-------------------------|---|
| 1. Beth Mellen Harrison | Supervising Attorney, Legal Aid Society |
| 2. Kirsten B. Williams | Vice President of Government Affairs, AOBA |
| 3. Josh Baker | Property Manager, Warren C. Smith |
| 4. Scott Bruton | Vice President, Housing Policy, Coalition for Nonprofit Housing & Economics Development |
| 5. Conrad Bennett | DC Association of REALTORS |
| 6. Rob Wohl | Tenant Organizing Manager, Latino Economic Development Center |

B. Government Witness

- | | |
|--------------------|---|
| 1. Johanna Shreve | Chief Tenant Advocate, Office of the Tenant Advocate |
| 2. Polly Donaldson | Director, Department of Housing and Community Development |

VI. ADJOURNMENT

ATTACHMENT E



Legal Aid Society
OF THE DISTRICT OF COLUMBIA

MAKING JUSTICE REAL

**Testimony of Beth Mellen Harrison
Supervising Attorney, Housing Law Unit
The Legal Aid Society of the District of Columbia**

**Committee on Housing & Neighborhood Revitalization
Council of the District of Columbia**

**Hearing on B22-441, B22-442, B22-570
“Rental Unit Fee Adjustment Amendment Act of 2017”
“Rental Housing Registration Update Amendment Act of 2017”
“Rental Housing Affordability Re-Establishment Amendment Act of 2017”**

December 18, 2017

The Legal Aid Society of the District of Columbia¹ supports the three bills before the Committee today:

- Bill 22-441, the Rental Unit Fee Adjustment Amendment Act of 2017, which will provide new funding the Committee intends to allocate to ensure that elderly and tenants with disabilities living in rent control units are exempt from dramatic rent increases;
- Bill 22-442, the Rental Housing Registration Update Amendment Act of 2017, which will ensure that the Rental Accommodations Division has current data about the number, type, and location of rent control units, and that this same information is broadly available to the public; and
- B22-570, the Rental Housing Affordability Re-Establishment Amendment Act of 2017, which will close a loophole in current law to ensure that housing providers renting to tenants with vouchers are not allowed to take dramatic rent increases otherwise barred under rent control.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 85 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

These bills will help to strengthen the District's rent control law as a tool for preserving affordable housing, but they are not enough. Still pending before this Committee are two other critical bills: B22-25, the Rental Housing Affordability Stabilization Amendment Act of 2017; and B22-100, the Preservation of Affordable Rent Control Housing Amendment Act of 2017. We urge the Committee to schedule these bills for mark-up so that they can be considered by the full Council during this legislative session.

Rent Control Preserves Housing Affordability in the District.

Rent control was implemented in the District to address the severe shortage of affordable housing available, particularly for low- and moderate-income renters. *See* D.C. Code § 42-3501.01. The purposes of the rent control law include "protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs," "protect[ing] the existing supply of rental housing from conversion to other uses," and "prevent[ing] the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments." *Id.* § 42-3501.02. By stabilizing annual rent increases and limiting dramatic rent increases to extraordinary circumstances, rent control helps to preserve affordable housing.

Rent control is vitally important today, as the District faces a housing affordability crisis of historic proportions. Recent reports from the D.C. Fiscal Policy Institute put this crisis in stark relief. Between 2002 and 2013, the District lost nearly half of its stock of low-cost units (monthly rents below \$800) and nearly one-third of its moderate-cost units (monthly rents between \$800 to \$1,000). *See* Wes Rivers, D.C. Fiscal Policy Inst., *Going, Going Gone: D.C.'s Vanishing Affordable Housing* 4 (Mar. 12, 2015).² D.C. now is ranked as the fourth most expensive city in the United States for renters. *See* Michele Lerner, *Washington Post*, "If you think D.C. has the most expensive rents in the nation, it's not a far stretch" (Feb. 28, 2017).³ As a result, nearly two thirds of extremely low-income households in the District spend more than half of their income on housing costs – and most spend 80 percent or more. *See* Claire Zippel, D.C. Fiscal Policy Inst., *A*

² Available at <http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>. \$800 is an affordable housing cost (based on the "affordability" definition used by the Department of Housing and Urban Development) for someone making \$32,000 per year, or working a full-time job at \$15.38 per hour, slightly above minimum wage.

³ Available at https://www.washingtonpost.com/news/where-we-live/wp/2017/02/28/if-you-think-d-c-has-the-most-expensive-rents-in-the-nation-its-not-a-far-stretch/?utm_term=.b83303988753.

Broken Foundation: Affordable Housing Crisis Threatens D.C.'s Lowest-Income Residents 3 (Dec. 8, 2016).⁴

The erosion of rent control housing contributes to rising rents in the District. Strengthening the rent control law is one of many steps the Council can and must take to ensure that low- and moderate-income residents are not priced out of the city.

Increasing the Rental Unit Fee Could Provide Funding to Protect Elderly and Tenants With Disabilities From Dramatic Rent Increases.

The Rental Unit Fee Adjustment Amendment Act of 2017 (B22-441) would increase the annual rental unit fee that housing providers in the District must pay from \$25 to \$30 per unit. This increase is in line with inflation and would impose no more than a modest additional burden on housing providers.⁵

The key question is what will happen with the additional funds. This Committee has expressed its intention to earmark the additional money to fund L21-239, the Elderly and Tenants with Disabilities Protection Amendment Act of 2015. Among other provisions, this law exempts low-income elderly and tenants with disabilities from extraordinary rent increases that housing providers take via petitions approved under the rent control law. To ensure that housing providers are not harmed by this new exemption, the law provides matching tax credits for the rent lost as a result. This is an important protection for those District residents most at-risk for displacement from dramatic rent increases.

Unfortunately, this portion of the law will remain ineffective until the Council allocates funding for its implementation. Funding the Elderly and Tenants with Disabilities Protection Amendment Act of 2015 should be a priority for this Committee and the Council. We support the Committee's intent to ensure that the additional funds raised by the Rental Unit Fee Adjustment Amendment Act of 2017 be allocated for this purpose, and we suggest amending the bill to make this intent a requirement. More fundamentally, we would support amending this bill or introducing future legislation to ensure that all funds raised from the annual rental unit fee are allocated for affordable housing priorities. We believe this is a change that housing providers would support as well.

⁴ Available at <http://www.dcfpi.org/wp-content/uploads/2016/12/DCFPI-Broken-Foundation-Housing-Report-12-8-16.pdf>. Extremely low-income households are those earning below 30 percent of area median income, or less than \$32,100 for a family of four. *Id.*

⁵ Since 2004, the annual rental unit fee has increased from \$15 to the current \$25, or 67 percent. For tenants in rent control units subject only to the annual CPI increase (other than elderly and tenants with disabilities, subject to slightly lower increases), rents have increased by 70 percent during this same period.

Requiring All Housing Providers to Re-Register Will Ensure Accurate Data About Rent Control Units.

The Rental Housing Registration Update Amendment Act of 2017 (B22-442) would require housing providers to re-register all units covered by the District's rent control law. Legal Aid supports this proposal but also suggests that the Committee expand the scope of this bill to include *all* rental units in the District, including those that are exempt from the rent control law.

A broad registration update is necessary because the Rental Accommodation Division (RAD) currently lacks accurate data about the number of units registered as covered by or exempt from the law, as well as key details about the size, location, and (where applicable) reason for exemption for these units. On an individual level, this information is critical for a tenant to understand her rights. In the aggregate, this data can inform policy decisions facing the Council.

Legal Aid previously has testified about the myriad of problems that tenants and their advocates encounter when trying to obtain accurate and up-to-date information about the registration status of particular rental units. We appreciate that the new Rent Administrator is implementing new procedures and systems to address these problems, and we are encouraged that we will see results soon, but problems do continue. Last month, we met with a tenant who was facing a large rent increase. When she visited RAD, she was told that her housing provider had not properly registered as exempt, which would mean the proposed rent increase was illegal. Legal Aid then worked with RAD and found that the property in fact was properly registered as exempt. Mistakes like this must be addressed.

Earlier this year, Legal Aid submitted a Freedom of Information Act request to RAD for all current registration statements for rental units in the District. Legal Aid sought this information on behalf of a coalition of tenant advocates exploring ways to strengthen the District's rent control law. In follow-up discussions, we learned from RAD that the agency was unable to produce all current registration statements because of the way the documents currently are stored. Lack of access to this information leaves an information gap that hampers efforts to strengthen and expand rent control.

With a new Rent Administrator in place and the Office of Tenant Advocate currently working on a rent control database, the time is right to close this information gap. Requiring re-registration will provide an important reset, ensuring that the rent control database and changes underway at RAD will move forward based on accurate data. We strongly support Bill 22-442's requirements that all housing providers re-register their units, and that all new registration statements also be available online to ensure easy public access.

Closing a Loophole in Current Law Will Ensure That Tenants With Vouchers Are Protected.

Finally, the Rental Housing Affordability Re-Establishment Amendment Act of 2017 (B22-570) closes a potential loophole in current law that may incentivize housing providers to rent to and then evict tenants with vouchers to evade the rent control law.

The Rental Housing Act currently exempts all subsidized housing units from the rent control law, including units that are rented to tenants with vouchers or similar, tenant-based subsidies. This exemption makes perfect sense; for subsidized housing units, other laws control the calculation of rent and ensure that tenant rents are kept affordable. Currently, the rent control law provides that once the subsidy ends, the unit falls back under rent control at whatever rent level was last charged. As a practical matter, this rent may be far higher than the prior rent control level, creating the possibility for abuse.

When housing providers with rent control units rent to voucher holders, they may be able to collect much higher monthly rents. This is because subsidy providers typically pay market-rate rents to housing providers who accept voucher holders, in part to ensure that voucher holders can compete with other tenants on the private market. If rent control has kept rent on a unit below market, the voucher rent level typically will be higher – and at times substantially higher. Paying market-rate rents for rent control units creates an incentive for housing providers to rent to voucher holders. These incentives are helpful because while source of income discrimination – i.e., refusing to rent to voucher holders – is illegal in D.C., it continues to create a barrier for more than a quarter of voucher holders looking for housing. See The Equal Rights Center, *Will You Take My Voucher: An update on Housing Choice Voucher discrimination in the District of Columbia* 10-12 (March 2013).⁶

At the same time, renting to a voucher holder should not provide an end-run around rent control. Current law creates that possibility. A housing provider with a below-market rent control unit may be able to lock in a large increase under rent control – sometimes far beyond what the law otherwise might allow – simply by renting to and then getting rid of a voucher holder. Set against the backdrop of ongoing source of income discrimination, this loophole in the law may create perverse incentives to rent to and then evict voucher holders from rent control units.

⁶ Available at https://equalrightscenter.org/wp-content/uploads/will_you_take_my_voucher.pdf; see also Andrew Giambrone, *Washington City Paper*, “Nonprofit Sues D.C. Landlord for Housing Discrimination Against Voucher Tenants” (April 13, 2017), available at <https://www.washingtoncitypaper.com/news/housing-complex/blog/20858153/nonprofit-sues-dc-landlord-for-housing-discrimination-against-voucher-tenants>.

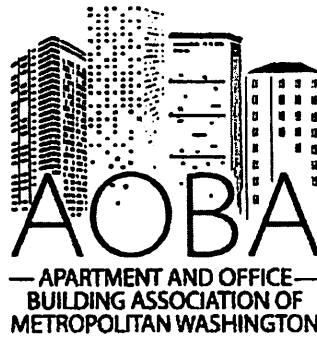
The way the subsidy exemption currently operates also can create challenges for tenants with short-term subsidies such as Rapid Re-Housing. Legal Aid has seen examples of housing providers seeking significant rent increases when they rent to tenants with Rapid Re-Housing subsidies. In one case, a rent control unit being marketed for approximately \$800 per month with utilities included then rented to a Rapid Re-Housing tenant for almost \$1200 per month without utilities. When this tenant's short-term Rapid Re-Housing subsidy ended, she struggled to pay the rent, now locked in at a significantly higher rate than it would have been without the subsidy exemption.

Bill 22-570 addresses these problems by changing the formula for the rent that a housing provider may charge when a tenant with a subsidy leaves a unit and the rent control exemption ends. The new rent control level would now be calculated starting with the prior rent control level and then adding all annual CPI rent increases that have gone into effect in the intervening time period. This change will remove the potential loophole and perverse incentive in current law, while ensuring that housing providers still have strong incentives to increase their rental income by bringing in voucher holders. In fact, housing providers with below-market rent control units will have even greater incentives to bring in and keep in place tenants with subsidies, because only then can the housing provider capture a higher rent. For tenants with short-term subsidies, keeping rental units affordable long-term will help ensure such tenants can take over payment of the full rent when their subsidies expire.

* * *

The three bills before the Committee today will help to ensure that the District's rent control law remains an effective tool for preserving long-term housing affordability for low- and moderate-income residents of the District. We urge the Committee to move forward with these bills, as well as the critical protections provided in B22-25, the Rental Housing Affordability Stabilization Amendment Act of 2017, and B22-100, the Preservation of Affordable Rent Control Housing Amendment Act of 2017.

Thank you for this opportunity to testify.



TESTIMONY BEFORE
THE
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
ON

**Bill 22-441, the “RENTAL HOUSING REGISTRATION
UPDATE AMENDMENT ACT OF 2017,”**

**Bill 22-442, the “RENTAL UNIT FEE ADJUSTMENT
AMENDMENT ACT OF 2017,”**

**Bill 22-570, the “RENTAL HOUSING AFFORDABILITY
RE-ESTABLISHMENT AMENDMENT ACT OF 2017”**

December 18, 2017

PRESENTED BY:

JOSHUA BAKER, WILLIAM C SMITH, INC.

WITH
KIRSTEN B. WILLIAMS, ESQ.
VICE PRESIDENT OF GOVERNMENT AFFAIRS, DC
APARTMENT AND OFFICE BUILDING ASSOCIATION OF
METROPOLITAN WASHINGTON

Good afternoon Chairperson Bonds, members of the Committee on Housing and Neighborhood Revitalization (Committee) and staff, I am Joshua Baker of William C. Smith, Inc. (WC Smith). As a company firmly grounded in the District of Columbia and respected for its community building capabilities, WC Smith manages over 10,000 rental units and employs over 700 employees, many of whom live and work in the District. I appear today on behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA). AOBA is a non-profit trade association representing owners and managers of more than 67,000 multi-family apartment units and over 91 million square feet of office space in the District. With me today is Kirsten Williams, AOBA's Vice President of Government Affairs for DC. We are pleased to appear before the Committee today to testify regarding Bill 22-441, the "Rental Housing Registration Update Amendment Act of 2017"; Bill 22-442, the "Rental Unit Fee Adjustment Amendment Act of 2017" and Bill 22-570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017."

I. Bill 22-441, the "Rental Housing Registration Update Amendment Act of 2017"

In 1988, the District Department of Consumer and Regulatory Affairs (DCRA) commissioned the Urban Institute to conduct a study of the newly implemented "Rental Housing Act of 1985." The report, "Rent Control and the Availability of Affordable Housing in the District of Columbia: A Delicate Balance," was the first to note that the District needed to develop a comprehensive information system for monitoring the rental housing stock if the District was to be successful at ensuring the availability of affordable rental housing for all District residents. Since that time, there have been a myriad of additional reports which have also outlined the need for the District to develop a comprehensive affordable housing database of all District-funded housing programs, including rent stabilization. Until recently, however, little had been done to create this system.

In 2015, the Council, under the leadership of Councilmember Anita Bonds, made a critical first step towards developing a comprehensive information system by approving the "Rent Control Housing Clearinghouse Amendment Act (Act)." During the hearing on this legislation, AOBA noted that it is critical that the database serve as a comprehensive compilation of information on all affordable housing options in the District. And, that if it is to serve as an effective tool to improve access to available affordable housing options, residents must be able to utilize the tool to search from a much wider pool of available units beyond the narrow universe of those that are subject to the District's rental housing laws. We truly applaud Councilmember Bonds for the introduction of Bill 22-441 as it seeks to make an important next step on developing a comprehensive information system by updating the registrations of rent control housing and ultimately providing data on the number, composition, viability, and affordability of the District's rent control housing stock. As the Department of Housing and Community Development (DHCD) is the agency charged with objectively administering the District's housing laws and is the agency which collects the rental housing information, AOBA recommends that the update and inclusion of this information into the "soon to be developed" database be administered by DHCD and the Office of the Chief Technology Officer.

Lastly, while we are supportive of the desire to update this vital information, we urge the Committee to strike the legislation's language that revises the definition of rent charged. As

we've discussed with the Committee, we look forward to assisting the Committee with revising this definition to ensure a clearer understanding for tenants and housing providers. However, as this definition is the subject of pending legislation and litigation, we believe the definition is more appropriate to be heard in that matter.

II. Bill 22-442, the "Rental Unit Fee Adjustment Amendment Act of 2017"

As the Committee considers increasing the District's rental unit fee, it is important to review the importance of both the use of the fee and the reasons for housing provider petitions. The Rental Housing Act permits a housing provider to increase rents based on one of the following petitions: (1) hardship; (2) capital improvement; (3) services and facilities; or (4) substantial rehabilitation. As more than 70% of the city's rental housing stock was built before 1975 and there are significant costs associated with maintaining pre-1975 properties. Unfortunately, many of our costs are significantly higher than the allowed CPI-based increases to the rents charged and maintaining the housing stock may at times necessitate the filing of a hardship petition. Reinvestment in a property may require the filing of a substantial rehabilitation or capital improvement petition. When the Council approved Bill 21-173, the "Elderly and Tenants with Disabilities Amendment Act of 2015 (Act)," it recognized for some buildings, the exemptions for elderly and disabled residents could be a significant percentage of the tenant population from being subject to the rent increases associated with those petitions. Notably, where the law then limited application of the capital improvement surcharge to qualified elderly and disabled tenants, it provided a tax credit to the housing provider in return.

We applaud the Committee for seeking to raise the rental unit fee to \$30 to fund this Act. This important law establishes critical rental protections for all elderly and tenants with a disability, while also ensuring that housing providers have the necessary financial support to invest back into their rental housing stock. AOBA believes, however, that the Committee should assess the current use of the rental unit fee before increasing it to \$8.50. The Committee's report when this measure was initially proposed in the Fiscal Year 2018 budget noted that only 91% of the current \$5,935,343.33 collected was expended. While DCRA has established policies and procedures for these collected funds, such as making repairs of volatile housing or property maintenance conditions, for emergency and non-emergency nuisance abatement. There may be more appropriate use of the funds. While we are aware that the Committee doesn't have jurisdictional review over DCRA during the upcoming Fiscal Year 2017 Performance Oversight, we urge you to raise questions about the use of these funds and analyze whether a repurposing of these funds is needed before merely raising the fee again.

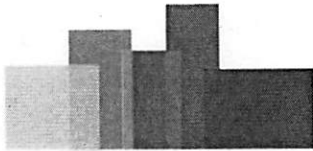
III. Bill 22-570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017"

As the Committee seeks to address the methodology used to determine rental payments when a unit that was previously exempt from rent control due to a tenant receiving a government-provided voucher ends, we urge the Committee to convene a working group comprised of the District of Columbia Housing Authority (DCHA), tenant advocates and housing provider to discuss this important policy. While the bill seeks to encourage housing providers to continue to accept housing choice vouchers, we believe the revised methodology

may discourage the practice. Currently, more than 3,400 housing providers in the District are Housing Choice Voucher Program partners. These housing providers work closely with DCHA to develop and maintain a program that not only provides needed housing for thousands of families, but offers financial rewards for housing providers who participate. It is important to note that the current rental payments were developed by DCHA in order to maximize housing assistance payments and increase affordable housing in low poverty and minority concentration areas. The housing assistance payments authorized under United States Housing Act are limited by Fair Market Rents (FMRs), which HUD establishes by geographic area. In general, the FMR for an area is the amount needed to rent privately-owned, decent, safe, sanitary, and modest rental housing. Further, as DCHA is a recipient of "Moving to Work" funds, a long-term federal program that provides public housing authorities with more local discretion over their funding allocation, policies, and procedures, the Committee must assess how these changes may affect the agency's current initiatives. For example, DCHA uses the MTW funds to create housing solutions that match the local area. There are a total of 56 rental submarkets in the District but before the 2015 increase, DCHA customers could rent in only 15 of those submarkets.

IV. Conclusion

AOBA commends the Council for continuing to improve the full continuum of housing from homelessness to market rate homeownership. We believe these measures, if adopted with a few adjustments can help to ensure the preservation of existing units and afford tenants with the resources needed to maintain viable housing options in the city. AOBA looks forward to continuing to work with the Committee and with all stakeholders to develop a comprehensive housing strategy which establishes a strategic framework for preserving and maintaining the District's rental housing stock. Thank you for the opportunity to testify. We will be happy to answer any questions from the Committee.



CNHED

Coalition for Nonprofit Housing and Economic Development

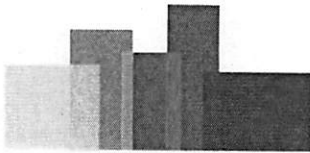
**Testimony of Scott Bruton, Vice President, Housing Policy
Coalition for Nonprofit Housing and Economic Development
Committee on Housing and Neighborhood Revitalization
Public Hearing on
B22-0441, the Rental Housing Registration Update Amendment Act of 2017
and
B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2017
and
B22-0442, the Rental Unit Fee Adjustment Amendment Act of 2017
December 18, 2017
John A. Wilson Building
Room 500**

Good afternoon Chairperson Bonds and members of the Committee. My name is Scott Bruton. I am the Vice President for Housing Policy at the Coalition for Nonprofit Housing and Economic Development (CNHED). The Coalition's 140 member organizations fund, finance, produce, preserve, and provide affordable housing and neighborhood-based economic development in the District of Columbia.

I am here today to testify in favor of the Rental Housing Registration Update Amendment Act of 2017, the Rental Housing Affordability Re-establishment Amendment Act of 2017, and the Rental Unit Fee Adjustment Amendment Act of 2017. These bills will improve the District's ability to enforce the Rental Housing Act of 1985 (RHA), to protect the affordability of the approximately 80,000+ units under rent control, to close a loophole in the administration of the RHA, and to fund an important rent control exemption for the elderly and tenants with a disability that was passed into law last year.

CNHED supports the Rental Housing Registration Update Amendment Act of 2017, which would require housing providers to reregister all units covered by the RHA. The process of reregistration would provide the most accurate data to date on the number, composition, viability, and affordability of the more than 80,000 units eligible for rent control in the District, which would then be available online for public inspection. We recommend that the Committee expand the legislation to include all rental units that were built before 1976; doing so will provide the District with complete data on all rental units that could be subject to rent control. (Buildings with fewer than five units can move in and out of rent control exemption, depending on status of their owners.) The data provided by this reregistration could also constitute the core of the more comprehensive rent control database, which the Office of the Tenant Advocate currently is working on.

CNHED also supports the Rental Housing Affordability Re-establishment Amendment Act of 2017. Despite the extensive coverage of the RHA for buildings built before 1976, some types of units are exempt from rent control, including units that are occupied by tenants with a federal of District rent subsidy. When a tenant with a government subsidy rents a unit in a



CNHED

Coalition for Nonprofit Housing and Economic Development

building under rent control, that particular unit becomes exempt from rent control. A federal or District tenant-based subsidy typically pays the housing provider market rate rent (regardless of the existing rent control rent for the unit). When the tenant with the subsidy moves out, the exemption ends. The policy of exempting tenant-based subsidy units from rent control encourages housing providers to rent to tenants with a subsidy; however, current law bases the rent of a previously exempt unit that "re-enters" rent control on the most recent rent charged for the unit. Where rents have risen to market rates during the exempt period, due to higher rates paid by government subsidies, the housing provider is able to bypass the rent stabilization procedures of the RHA, and the units re-enter rent control at market rate, with rents unaffordable to many tenants who do not have a subsidy.

This bill would change the formula used to determine the rent of units that had been exempt for a period of time due to the tenancy of a subsidy holder. The new formula calculates the new rent control rent by adding the total of all annual rent control increases that accrued during the period of exemption to the rent on the day before the unit became exempt.

This new approach gives housing providers a much greater incentive to continue to rent to tenants with subsidies, because only when they rent to subsidy holders are they able charge the market-rate rents provided by the subsidy. If the housing provider chooses to rent to a tenant who does not have a subsidy, then the rent is lowered to the amount governed by rent control, thereby preserving rent stabilization and the affordability intent of the RHA. This bill also helps to keep rents more affordable for tenants who are only receiving short-term subsidies, such as Rapid Rehousing, and then are faced with taking over payment of the unit's rent after the subsidy ends.

CNHED encourages the passage of the Rental Unit Fee Adjustment Amendment Act of 2017. This bill would increase this specific fee for rental apartments in the District from \$25 to \$30, in order to fund L21-239, the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016, which went into effect on April 7, 2017. L21-239, which CNHED also supported, established critical rental protections for all elderly and tenants with a disability and provided exemptions for low-income elderly tenants and low-income tenants with a disability facing rent increases resulting from housing provider petitions. To compensate landlords for this exemption, the District will provide them a matching tax credit. CNHED believes that it should be a priority for this committee to fund L21-239. We also encourage the Committee to ensure that all funds raised through the annual rental unit fee are allocated for affordable housing priorities.

Thank you for the opportunity to testify.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**



Public Hearing on

Public Hearing on B22-442, the "Rental Housing Registration Update Amendment Act of 2017,"

**B22-570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017,"
and**

B22-441, the "Rental Unit Fee Adjustment Amendment Act of 2017"

**TESTIMONY OF
Polly Donaldson, Director
Department of Housing and Community Development**

**Before the
Council of the District of Columbia
Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson**

**Monday, December 18, 2017, at 2:00 p.m.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Good morning, Chairperson Bonds and members of the Committee on Housing and Neighborhood Revitalization. I am Polly Donaldson, Director of the Department of Housing and Community Development (DHCD).

I am pleased to appear before you to testify on behalf of the Bowser Administration on B22-442, the "Rental Housing Registration Update Amendment Act of 2017," B22-570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017," and B22-441, the "Rental Unit Fee Adjustment Amendment Act of 2017."

DHCD's mission is to create and preserve economic opportunities for low and moderate income residents and to revitalize underserved neighborhoods in the District of Columbia. Within that mission, DHCD is committed to administering the Rental Housing Act of 1985, as amended (the Rental Housing Act),¹ balancing the interests of tenants and housing providers while advancing the Rental Housing Act's statutory purposes.

Rental Unit Fee Adjustment Amendment Act of 2017 (Bill 22-441)

DHCD has no concerns about the proposed increase to \$30 in the Rental Unit Fee Adjustment Amendment Act of 2017. Both the rental unit fee itself and the \$5 dollar increase remain modest.

We ask that with this increase the Committee consider dedicating a portion of the rental unit registration fee toward administering the Rental Housing Act.² As the

¹ D.C. Official Code § 42-3501.01, et seq.

² D.C. Official Code § 42-3502.04.

Committee is aware, there are increasing demands and costs associated with administering the statute. This is an opportunity to dedicate a funding stream for the ongoing improvements and operations for data collection and dissemination activities of the Housing Regulation Administration (HRA).

Rental Housing Registration Update Amendment Act of 2017 (Bill 22-442)

In substance, DHCD supports the Rental Housing Registration Update Amendment Act of 2017. The proposed strategy of requiring housing providers to update rental unit registrations is essential to building a comprehensive picture of the rent controlled housing stock in the District of Columbia, and this common sense proposal will prepare DHCD for the anticipated implementation of the rent control database in the next several years.

However, DHCD has three concerns regarding changes mandated by the Rental Housing Registration Update Amendment Act of 2017. First, the proposed bill offers a definition for “rent charged” that differs from other legislative proposals including: the Elderly and Tenants with Disabilities Protection Amendment Act of 2015 (D.C. Law 21-0239 effective April 7, 2017), the Discounted Rent Clarification Amendment Act of 2017 (Bill 22-0438 introduced Sept. 19, 2017), and the Rental Housing Affordability Stabilization Amendment Act of 2017 (D.C. Bill 22-0025 introduced Jan. 10, 2017). The lack of a clear definition of “rent charged” in this legislation coupled with the multiple statutory and proposed definitions will muddy compliance, administration, and enforcement of the Rental Housing Act and the regulatory framework. DHCD’s view, which I am certain you share, is that it is imperative that the Rental Housing Act provide a clear and consistent definition of “rent charged.”

Second, DHCD requests that Council add language clarifying that all housing providers that are exempt from rent control are required to register with DHCD. Currently, the requirement that exempt properties must be registered appears in regulatory language, but not the statute. This would help clarify for housing providers whose housing accommodations are exempt from rent control their existing responsibility to register their rental properties.³

Third, DHCD has a concern with the timeline for housing providers to register contained within the bill. The proposed effective date of this measure being “within 120 days of the effective date of the Rental Housing Registration Update Amendment Act of 2017, as introduced on September 19, 2017,” requires further consideration because such a rigid timeline may not comport or coordinate with the future implementation of the Publicly Accessible Rent Control Clearinghouse.

DHCD’s Rent Administrator and the Housing Regulation Administration staff are both working with the Office of the Tenant Advocate and the Office of the Chief Technology Officer to design and pilot the Publicly Accessible Rent Control Clearinghouse. DHCD is committed to the program’s success. The bill provides a common sense way to establish the baseline data for the Publicly Accessible Rent Control Clearinghouse. However, we do not believe that the pilot for Publicly Accessible Rent Control Clearinghouse will be ready to receive data within the timeframe as projected in the bill.

Given our concerns, we suggest that in order to properly implement the tenets of this measure that DHCD be given sufficient lead time prior to the 120 day time frame as

³ D.C. Official Code §§ 42-3502.05 (a) and (f)

contemplated by the bill in which the agency must receive thousands of new forms this legislation will require, as well as the requisite funding to develop its own web-based form submission system in coordination with the Office of the Tenant Advocate and Office of the Chief Technology Officer. There are a number of practical reasons for this approach:

(1) Coordinating the mandated rental registration effort with the Publicly

Accessible Rent Control Clearinghouse will eliminate the need for paper-based form submissions and a hasty development and implementation of an on-line form submission system by DHCD. Creating and testing such a system would not only be challenging under the proposed timeline but also may complicate the future integration of DHCD's data into the Clearinghouse when it comes online.

(2) Pairing the registration update with the launch of the Publicly Accessible Rent Control Clearinghouse, or at least the development of the form submission component of the tool, will streamline agency efforts and maximize the investment that the District is making in the Clearinghouse. If the registration update coincides with the launch of the Clearinghouse, when housing providers submit their data, the information they provide will not only already be in the proper format but also immediately available for public use. Moreover, the re-registration effort will serve to familiarize all housing providers with the new tool, greatly increasing its utility and acceptance on day one. We anticipate quicker and increased compliance by assuring housing providers that they will be asked to "re-register" one time only.

In conclusion, I believe this is important legislation but I would like to have my staff work with you and those of the other interested agencies and offices to reach a solution that efficiently achieves your vision for the registration update and the roll out of the Publicly Accessible Rent Control Clearinghouse.

Rental Housing Affordability Re-establishment Amendment Act of 2017 (Bill 22-570)

The final bill we are discussing today is the Rental Housing Affordability Re-establishment Amendment Act of 2017. This bill changes how rent levels are reset at the end of a tenant-based housing subsidy for units in the rent control housing stock. By calculating the rent based on the standard adjustment that would have occurred in the absence of the subsidy, the bill achieves the following goals:

- 1) maintaining the integrity and continuity of the rent stabilization regime; and
- 2) to the extent the subsidized rent was higher, the bill may encourage more housing providers to continue to seek to fill their accommodations with assisted households after a previous tenant-based housing subsidy tenancy ends

The intent of this change better aligns with the purposes of the Act and the subsidy programs.

However, DHCD is concerned that the term “tenant-based housing subsidy” is not sufficiently clear. The bill should also account for units whose rents were always set at the subsidy level or otherwise have no rent history on file with the Rental

Accommodations Division (RAD) that could be used for calculating the standard adjustment that would have occurred in the absence of the subsidy.

One approach would be for the bill to clarify its intent to cover the entire range of tenant-based housing subsidies by adopting language that states that at the end of any subsidy period the rent shall be set using the standard annual adjustment calculation in the absence of the subsidy or the monthly rent averaged of the most recent six months, "whichever is lower."

A technical point is that the bill should clarify whether the housing provider must file annually or at the end of a tenant's tenancy. Our view is that the housing provider should be required to file annually with DHCD in order to be consistent with other Rental Housing Act filing provisions, which require annual updates and filings.

Thank you, Madam Chair and Committee members, for this opportunity to testify. I am happy to answer any questions.

Government of the District of Columbia



Office of the Tenant Advocate

Testimony of

Johanna Shreve
Chief Tenant Advocate

Public Hearing on:

B22-0441, the “Rental Unit Fee Adjustment Amendment Act of 2017”

B22-0442, the “Rental Housing Registration Update Amendment Act of 2017”

and

B22-0570, the “Rental Housing Affordability Re-establishment Amendment Act of 2017”

Committee on Housing and Neighborhood Revitalization
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

on

Monday, December 18, 2017
2:00 p.m., Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Good afternoon, Chairperson Bonds, and members of the Committees and staff. I am Johanna Shreve, Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate (OTA). I am here today to testify on B22-0441, the “Rental Unit Fee Adjustment Amendment Act of 2017”, B22-0442, the “Rental Housing Registration Update Amendment Act of 2017”, and B22-0570, the “Rental Housing Affordability Re-establishment Amendment Act of 2017.”

B22-0441, the “Rental Unit Fee Adjustment Amendment Act of 2017”

Title IV of the Rental Housing Act of 1985 (“Rental unit fee”) requires all for-profit housing providers to pay a fee for each rental unit operated within the District of Columbia. The rental unit fee has been increased periodically over its 40 year history. However, it was not increased for nearly a decade prior to the FY 2018 Budget Support Act, which increased the fee by \$3.50 from \$21.50 to \$25.

Bill 22-441, the “Rental Unit Fee Adjustment Amendment Act of 2017,” would further increase the rental unit fee by \$5 from \$25 to \$30. I understand the legislative rationale to be that the rental unit fee would now be approximately \$30, had fee increases kept pace with the rent control law’s standard annual rent increases (CPI plus 2 percent).

Given the District's development boom and also its critical needs, I believe this increase in the fee is warranted. According to an Urban Turf article last week, 5,171 new rental apartments were newly constructed in the District during the first three quarters of 2017 alone.¹ At the same time, it is well-documented that rental housing in the District that is affordable for moderate as well as lower income households is disappearing. I was gratified to hear that at a joint stakeholder working group session, housing providers expressed support for the concept of a rental unit fee increase, provided that it is used strategically to address the District's critical rental housing needs.

Under a 2012 amendment, rental unit fee revenue is now deposited into DCRA's Nuisance Abatement Fund. As important as this fund is, I believe that the rental unit fee revenue should be used first and foremost to effectuate its original purpose, namely the administration and enforcement of the District's rent control law and the other parts of Act, as well as the Act's core purposes.

The first line for administration and enforcement of the Act is the Rental Accommodations Division at DHCD (RAD). That office needs to be adequately funded in light of the move towards digitalization of the rent

¹ *10.4 Million Square Feet: An Accounting of DC's Development Pipeline*, by Nena Perry-Brown, Urban Turf, December 13, 2017.

control clearinghouse database, for which RAD will assume full responsibility. Thus I recommend that the Committee work with the administration towards achieving this objective, while also ensuring that the Nuisance Abatement Fund is also fully funded.

The Act's core purposes include the "protecting low-and moderate income tenants from the erosion of their income from increased housing costs"; and "preventing the erosion of moderately prices rental housing." (D.C. Official Code § 42-3501.02(1) & (5)). Towards those ends, it would be most appropriate to dedicate a portion of rental unit fee revenue to fund the Elderly Tenant and Tenant with a Disability Protection law. In relevant part, a provision in that law, which is subject to funding, exempts low-income elderly and disability tenants from having to pay rent increases pursuant to housing provider petitions.²

I also wish to note that historically the rental unit fee has long suffered from an under-collection rate of as much as 50 percent. The District simply cannot afford any under-collection. We must make concerted efforts to ensure compliance using a multi-pronged approach, including a public information campaign and any appropriate enforcement methods.

² Law 21-239, the "Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016," effective April 7, 2017; D.C. Official Code § 42-3502.24(b).

**B22-0442, the “Rental Housing Registration Update Amendment
Act of 2017”**

Bill 22-442, the “Rental Housing Registration Update Amendment Act of 2017,” would require that housing providers in the District reregister their accommodation under the Rental Housing Act within 120 days of the effective date of the legislation. The stated legislative purpose is to secure updated data on the number, composition, viability, and affordability of the District's current rent control housing stock, and to ensure that registration statements are made available for public inspection online on DHCD's website.

Certainly there is an acute need for more and better data regarding the District's stock of rent control units and rental housing units generally, whether for enforcement, policy-making, or other purposes. However, I do believe that certain amendments to the bill as introduced to better achieve the legislative objectives are warranted.

Rent Control Clearinghouse Database Demonstration Project

First and foremost, I believe that it would be a mistake to require the creation of a database for reregistration purposes separate and apart from the Rent Control Clearinghouse Database, the creation of which has been tasked to the OTA, and the development of which is underway. Even in the demonstration phase, the clearinghouse database could have the capacity to

fulfill the bill's re-registration requirements, inasmuch it will include data fields associated with any and all statutory and regulatory requirements. Thus, it would be more efficient to implement the reregistration requirement as a priority task order to the OTA in the development of the clearinghouse database, along with the appropriate supplemental funding. Upon the Committee's request, I will conduct a cost analysis to determine what that amount is. Finally, I note that this "one unified database" approach would also preempt potential interoperability and inter-communicability issues associated with dual systems.

Coverage

The regulations are clear that the registration requirement applies to both units that are exempt from rent control as well as units that are subject to rent control (14 D.C.M.R. § 4106). However, arguably there is some ambiguity in the statute, which carries over to the bill's reregistration requirement (D.C. Official Code § 42-3502.05(f)). Thus I recommend that the bill be amended to clarify that the registration as well as the reregistration requirements apply to all units, whether they are subject to or are exempt from rent control. Additionally, given that any number of rental units in the District have never been registered, an (appropriately funded)

public information campaign will be essential to achieving the legislative objectives.

Timing and fees

The bill's requirement that all housing providers reregister all rental units within 120 days of the effective date raises some timing issues. If all housing providers are required to reregister within the same timeframe, it may create efficiencies to require license renewals at the same time. This would put all housing providers on the same two year renewal cycle, rather than the two staggered odd versus even year cycles that currently exists.

Alternatively, consideration should be given to imposing the reregistration requirement on each housing provider at the time the license renewal is due under the current system. This could help avoid the burdens of multiple filings and fees within a short period of time.

This bill as introduced does not address whether a reregistration fee should be imposed on the housing provider, or whether the District should absorb any associated administrative costs. Either way, the Committee should consider amending the bill to clarify the legislative intent.

B22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017"

Bill 22-0570, the "Rental Housing Affordability Re-establishment Amendment Act of 2017," would change the formula for calculating the new

base rent for a unit that reverts to rent control upon the termination of an exemption due to a tenant-based subsidy. To understand what the bill is intended to do, it is helpful to understand the various new base rent formulas under existing law.

Current law

Under the existing law, there are three different formulas for calculating the new base rent for a unit that either is newly covered by rent control, or reverts to rent control following the termination of an exemption.

1. Upon the termination of most but not all exemptions, the new base rent is calculated by adding five (5) percent to the average rent charged during the last six (6) months of the exemption. (D.C. Official Code § 42-3502.09(a)). If the unit had been subject to a rent subsidy, the rent charged is considered to be the entire amount of rent for which both the tenant and the government were responsible for paying, or the equivalent of market rent.
2. In the unusual event that a unit in an accommodation established after 1985 becomes subject to rent control, the housing provider may choose the amount of the base rent, presumably based upon the market rate. (D.C. Official Code § 42-3502.09(b)).

3. Finally, upon the expiration of the exemption for rental units owned by certain cooperative housing associations, the new base rent is calculated by taking the rent charged *at the outset* of the exemption, and adding to that amount each annual adjustment of general applicability (more commonly known as the “rent control CPI”) during the period of the exemption. (D.C. Official Code § 42-3502.09(c)). This is the most favorable new base rent formula in terms of affordability preservation, because it is the only one for which the market rent is not a factor.

Currently, when a unit reverts to rent control upon the termination of an exemption due to a tenant-based subsidy, the first of these three formulas – essentially market rate plus five (5) percent – is the one used to calculate the new base rent. Bill 22-570 would replace this formula with the third formula – the last rent charged just prior to the start of the exemption plus each annual rent control CPI thereafter. This is only the case in the context of a tenant-based subsidy. The bill as introduced does not impact the existing new base rent formula upon the termination of a project or building-wide subsidy, which would remain at essentially market rate plus five (5) percent.

I support this measure because it would help to preserve affordability by effectively lowering the new base rent for a significant category of units upon reverting to rent control, and eliminating the housing provider's incentive to discontinue renting the unit to a subsidized tenant. I urge the Committee to also carefully assess each type of building-wide subsidy program, and consider extending the bill's coverage as appropriate. I have the following additional recommendations.

New base rent formula for other exemptions

Unless the scope of the bill is expanded to cover other exemptions, the formula for calculating the new base rent for some previously exempt units will continue to be essentially market rate plus five (5) percent. I recommend that, at minimum, section 209(a) of the Act (D.C. Official Code § 42-3502.09(a)) be amended to replace the "plus five (5) percent" with the standard annual rent increase formula that applies to elderly tenants and tenants with disabilities. That cap is the amount equal to the lowest of three (3) factors: the rent control CPI; the Social Security Cost of Living Adjustment; and five (5) percent. (D.C. Official Code § 42-3502.24(a)). Even this seemingly minimal measure will have a positive impact in terms of preserving the affordability of the District's stock of rent controlled units.

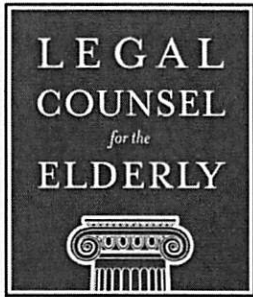
Meeting enforcement challenges

I recommend that the bill also be amended to require the housing provider to record certain information with the Rent Administrator's office upon claiming an exemption from rent control based on a government subsidy program. This information should include which program is in play, and the start and anticipated termination date of the program. This will help to ensure compliance with the Act, particularly with section 209, after what could be a considerable passage of time.

This will also help address instances in which the housing provider claims a 100 percent building-wide exemption on the basis of a single tenant-based subsidy, or where subsidized tenants occupy very few units in the accommodation. While we cannot quantify how often this happens, the OTA has been made aware of such instances. These false and unlawful claims of exemption have a potentially very serious impact on the District's affordable housing stock. Accordingly, I recommend that the bill also be amended to include a penalty on a housing provider who is found to have filed any such claim of exemption in bad faith.

Conclusion

Thank you, Chairperson Bonds for this opportunity to testify and for your leadership on these important issues. This concludes my testimony and I am happy to answer any questions you may have at this time.



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Bill 22-0441, the “Rental Housing Registration Update Amendment Act of 2017”

Bill 22-0570, the “Rental Housing Affordability Re-establishment Amendment Act of 2017, and

Bill 22-0442, the “Rental Unit Fee Adjustment Amendment Act of 2017”

December 18, 2017

**Committee on Housing and Neighborhood Revitalization
Chairperson, Anita Bonds**

**Testimony of Jennifer L. Berger, Esq., M.S.W.
AARP Legal Counsel for the Elderly**

Legal Counsel for the Elderly (LCE) defends, protects and empowers District residents ages 60 and over through access to housing, public benefits and protective arrangements. LCE’s eviction prevention team, the Alternatives to Landlord/Tenant Court Project, integrates social work and legal principles to help elders age in place in affordable and safe dwellings. A major impediment to our clients’ goal of aging in place is the dearth of affordable and safe rental housing in the District of Columbia (“D.C.”).

The Rent Stabilization Program in D.C. enunciated long ago the need to protect low-income tenants from “erosion of their income from increased housing costs” due to the “shrinking” availability of affordable housing, a problem that is “felt most acutely among low- and moderate-income renters”.¹ LCE supports **Bills 22-0441, the “Rental Housing Registration Update Amendment Act of 2017”; 22-0570, the “Rental Housing Affordability Re-establishment Amendment Act of 2017, and 22-0442, the “Rental Unit Fee Adjustment Amendment Act of 2017”** as we need both the information, revenue, and proactive approach to rent control that the bills will afford. LCE wants to underscore, however, that while introducing new legislation is helpful, we need to ensure passage of existing legislation, like (22-0025 (CPI/Vacancy Increases) and 22-100 (Voluntary Agreements) and funding enacted legislation, like the elder/disability exemptions of 21-0173.

Bill 22-0441, the “Rental Housing Registration Update Amendment Act of 2017”

Bill 22-0441 provides a valuable opportunity to learn about the true affordable housing stock in the District of Columbia. Without that data, we cannot identify with the precision what the housing need is, compared with the availability of housing. Moreover, a fulsome registration process, combined with a functional database, will facilitate immensely efforts to engage in outreach and



education to rent control tenants. Finally, exempt units should have to register as well, which affords the opportunity to engage in outreach and education to tenants of those units as well.

Bill 22-0570, the “Rental Housing Affordability Re-establishment Amendment Act of 2017.

The affordable housing crisis is intensifying. As of July 1, 2016, there were 79,016 (11.6%) adults aged sixty-five or older living in D.C.² Approximately 17 percent of that group (13,433) lived at or below the poverty level.³ Unsurprisingly, the incomes of older adults decline with age.⁴ As a result, older adults throughout the United States are more likely to spend more than half of their income on housing.⁵ At least 39,000 low-income households in the District of Columbia pay more than half of their income for rent, a 16 percent increase from 2007, with 36 percent of those households having members who are elderly and or have disabilities.⁶

The demand for available senior affordable housing outpaces the number of new units or vouchers. The majority of low-income seniors in D.C. are renters. This is because renters, regardless of age, tend to be concentrated at the lowest income levels.⁷ The current supply of subsidized housing is inadequate to meet the needs of low-income older renters, with DC Housing Authority’s wait list exceeding 39,000 applicants. Some private, HUD-subsidized senior buildings also have waiting lists so long that they do not take new applications ongoing. The wait list for private, subsidized senior housing is often three to five years, in the District based on our experience. Compounding the problem, by 2020 the need for affordable units will exceed the demand 22,100 to 33,100 more households with extremely low incomes, including units made affordable through federal housing choice vouchers and D.C.’s Local Rent Supplement Program.⁸

At present, if tenants with vouchers vacate the unit, the most recently charged rent remains and erodes the affordability to rental units permanently: Bill 22-0570 ensures the ongoing affordability of rental units after voucher holders leave the rental units, ensuring that the units return to rent control levels.

Bill 22-0442, the “Rental Unit Fee Adjustment Amendment Act of 2017”, will provide necessary funds to activate the exemptions within “The Elderly Tenants and Tenants with Disabilities Protection Amendment Act of 2015” (Bill 21-0173).

LCE and other advocates advocated for years that D.C. tenants who are elderly and/or have disabilities, who have limited income, be protected from *all* housing provider petitions, not just capital improvement petitions. The exemption for capital improvement petitions, the least impactful petition, has not prevented the erosion of rent control. LCE supported expanding the exemption to hardship and substantial rehabilitation petitions. “The Elderly Tenants and Tenants with

Disabilities Protection Amendment Act of 2015” (Bill 21-0173) was enacted April 7, 2017 but the required housing provider tax credit to implement the Act’s exemptions has not been funded. As a result, the Act remains ineffective.

Funding Bill 21-0173 is of foremost concern to elderly tenants of rent control buildings. Bill 22-0442 offers a great opportunity to address this funding concern by adding \$5 per unit to the per unit registration fee. Bill 22-0442 is also critical to setting a precedent to earmark the rental housing registration fees to benefit tenants versus to go to the general fisc. This way programs and legislation that benefit at-risk tenants can receive ongoing funding.

Conclusion

We appreciate your willingness to explore meaningful solutions to the affordable housing crisis for District elders by getting more fulsome data, preserving rent control for units after subsidized tenants leave those units, and introducing a funding source for valuable protections for seniors and tenants with disabilities. Please contact me at (202) 434-2155 if you have any questions regarding this testimony. LCE recommends that Councilmembers who introduced this legislation meet with tenant advocates to ensure the regulations for Bill 22-0448 maximize the impact of the legislation.

Sincerely,

/s/

Jennifer L. Berger, Esq.
Manager/Legal Aid Attorney

¹ 42 DC Code Section 3501.02(a); 42 DC Code Section 3501.010(c).

² U.S. Census statistics from 2016 (viewed November 28, 2017 at <https://www.census.gov/quickfacts/DC>).

³ See Kaiser Family Foundation State Health Facts (viewed November 28, 2017 at <https://www.kff.org/other/state-indicator/poverty-rate-by-age/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>).

⁴ See Ctr. for Hous. Policy, *Housing an Aging Population: Are We Prepared?* 1 (2012), <http://www.nhc.org/media/files/AgingReport2012.pdf>. It is important to note that overall economic growth will not alleviate the income and housing needs of elderly poor people, as returning to work or gaining income through marriage are often unlikely. Nat’l Coalition for the Homeless, *Homelessness Among Elderly Persons* at 2 (Sept. 2009)(viewed November 28, 2017 at <http://www.nationalhomeless.org/factsheets/Elderly.pdf>).

⁵ See Ctr. for Hous. Policy, *Housing an Aging Population: Are We Prepared?* at 1 (2012)(viewed November 28, 2017 at <http://www.nhc.org/media/files/AgingReport2012.pdf>).

⁶ See Ctr. on Budget and Policy Priorities, *DC Fact Sheet: Federal Rental Assistance* at 2 (March 30, 2017)(viewed November 28, 2017 at <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-DC.pdf>).

⁷ See Joint Ctr. for Hous. Studies of Harvard Univ., *Renter Demographics* 17 (2011), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/ahr2011-3-demographics.pdf>.

⁸ See Urban Institute May 2015 report, “Affordable Housing Needs Assessment for the District of Columbia” at p. 4 (viewed November 28, 2017 at <https://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000214-Affordable-Housing-Needs-Assessment-for-the-District-of-Columbia.pdf>).

ATTACHMENT F

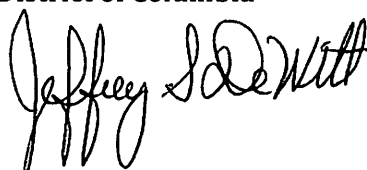
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: March 13, 2018

SUBJECT: Fiscal Impact Statement – Rental Housing Affordability Re-establishment Amendment Act of 2018

REFERENCE: Bill 22-570, Draft Committee Print sent to the Office of Revenue Analysis on March 1, 2018

Conclusion

Funds are not sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill will have no cost in fiscal year 2018, but it will reduce District revenues by \$10,000 in fiscal year 2019 and \$231,000 over the four-year budget and financial plan.

Background

A unit in a rent-controlled building is exempt from rent control while it is occupied by a tenant with a District or federal rent subsidy. During this time the landlord can charge a near-market rate rent for the unit.¹ Once the subsidy expires, increases in the unit's rent are once again bound by rent-control limits, but the initial rent the landlord can charge is based on the near-market rate rent charged to the subsidy-holder.

The bill changes² the maximum rent a landlord can charge for a rent-controlled unit once a subsidy expires. The rent will be limited to the rent charged before the subsidy was used, plus any increases allowed under rent control during the period the subsidy was used. If the pre-subsidy rent is not on file with the Rent Administrator at the Department of Housing and Community Development, the rent charged will be the lowest of: 1) the next oldest rent charged, plus any increases allowed under

¹ Up to 175 percent of the fair market value as determined by the U.S. Department of Housing and Urban Development

² By amending Section 209 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.09).

The Honorable Phil Mendelson

FIS: Rental Housing Affordability Re-establishment Amendment Act of 2018, Draft Committee Print sent to the Office of Revenue Analysis on March 1, 2018

rent control; 2) 100 percent of the small area fair market rent for the Washington metropolitan area³; or 3) the average rent changed during the last six consecutive months of the subsidy-holder's occupancy.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill will have no cost in fiscal year 2018, but it will reduce District revenues by \$10,000 in fiscal year 2019 and \$231,000 over the four-year budget and financial plan.

The bill will lower the rental income of some units upon expiration of a District or federal rent subsidy. The lowered rental income will result in reduced property tax and business income tax collections for the District.

We estimate approximately 600 apartment units a year will be affected by the bill⁴ and that the bill will reduce the average rent for these units from \$1,413 a month to \$1,119 a month⁵ during the first year after the subsidy expires. A portion of this rental income loss will lower property tax assessments and reduce the income on which businesses are taxed.⁶

Once the subsidy for each of the 600 units has expired, and the new rent allowed under the bill has been in effect for a full year, the District will lose about \$180,000 in property tax revenue⁷ and \$35,000 in business franchise tax revenue⁸ a year for this group of units—though the losses will be delayed since tax payments for the current year are based on previous years' income and property valuations.⁹ Costs will add up each year as subsidies expire for a new set of 600 units.

The table below shows the revenue losses for the fiscal year 2018 through fiscal year 2021 budget and financial plan.

³ Established by the U.S. Department of Housing and Urban Development pursuant to 24 CFR 888.113.

⁴ The number of units affected is our estimate of the number of units in rent-controlled buildings occupied by people with District rapid rehousing subsidies that expire each year, excluding units refilled with another rapid rehousing subsidy holder. We assume that other types of subsidies are highly unlikely to expire during the budget and financial plan period and therefore units with other subsidies in use will not be affected by the bill.

⁵ We assume rents of subsidized units are 30 percent more expensive than those of rent-controlled units.

⁶ We assume 20 percent of gross rental income loss will be profit loss that leads to lower business franchise tax revenue and 50 percent of gross rental income loss will lower property values leading to loss of property taxes. We assume a 5 percent cap rate for the affected properties.

⁷ Assuming a 5 percent cap rate. The property tax is 0.85 percent of the property's assessed value.

⁸ The business franchise tax is 8.25 percent.

⁹ Changes in rental income that occur in fiscal year 2018 will first affect business franchise tax payments in fiscal year 2019, while changes in a property's value that occurs in fiscal year 2018 will first affect property tax payments in fiscal year 2021.

The Honorable Phil Mendelson

FIS: Rental Housing Affordability Re-establishment Amendment Act of 2018, Draft Committee Print sent to the Office of Revenue Analysis on March 1, 2018

Revenue Loss from the Rental Housing Affordability Re-establishment Act of 2018					
	FY 2018	FY 2019	FY 2020	FY 2021	Four-Year Total
Property tax revenue loss	\$0	\$0	\$0	\$105,000	\$105,000
Business franchise tax revenue loss	\$0	\$10,000	\$39,000	\$77,000	\$126,000
TOTAL REVENUE LOSS	\$0	\$10,000	\$39,000	\$182,000	\$231,000

Table Assumptions:

- 602 units a year will be affected by the legislation
- The average rent of these units will decrease from \$1,413 to \$1,119 a month once the bill is implemented. Rents will increase on average 3 percent a year.
- 20 percent of gross rental income loss will be profit loss that leads to lower business franchise tax revenue; 50 percent of gross rental income loss will factor into lower property values leading to loss of property taxes (we assume a 5 percent cap rate).
- The business franchise tax rate is 8.25 percent and property tax rate is 0.85 percent.
- Costs ramp up over time for several reasons: people's subsidies are expiring throughout the year; the pool of units affected by the bill grows each year as new subsidies expire; profit losses do not affect the business franchise tax payments until fiscal year 2019 and the property tax payments until fiscal year 2021.
- Bill goes into effect in June 2018.

ATTACHMENT G



OFFICE OF THE GENERAL COUNSEL

Council of the District of Columbia
1350 Pennsylvania Avenue NW, Suite 4
Washington, DC 20004
(202) 724-8026

MEMORANDUM

TO: Councilmember Anita Bonds

FROM: John Hoellen, Deputy General Counsel *JH*

DATE: September 21, 2018

RE: Legal Sufficiency Determination for Bill 22-570, the
Rental Housing Affordability Re-establishment
Amendment Act of 2018

The measure is legally and technically sufficient for Council consideration.

The proposed measure would amend section 205 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §. 42-3502.05) ("the act"), to require housing providers to: 1) file an amended registration statement with the Rent Administrator within 30 days after a previously claimed exemption from rent control expires or terminates; and 2) notify tenants of the amended registration statement.

The measure would also amend section 209 of the act to establish new amounts of rent a housing provider may charge for a unit in a housing accommodation when certain exemptions from rent control expire or terminate.

I am available if you have any questions.

ATTACHMENT H

Comparative – B22-0570, the Rental Housing Affordability Re-establishment Amendment Act of 2018

District of Columbia Official Code

Division VII. Property.

Title 42. Real Property.

Subtitle VII. Rental Housing.

Chapter 35. Rental Housing Generally.

Subchapter II. Rent Stabilization Program.

§ 42-3502.05. Registration and coverage.

(g-1)(1) After the expiration or termination of an exemption claimed pursuant to subsection (a) of this section, a housing provider shall file, upon the re-renting of the unit, an amended registration statement with the Rent Administrator, which shall include the rent charged for the unit, calculated in accordance with the requirements of section 209, and the documentation supporting the calculation.

(2) The notice requirements of subsection (h)(2) of this section shall apply to any amended registration statement filed pursuant to this subsection.

§ 42-3502.09. Rent charged upon termination of exemption and for newly covered rental units.

(a) Upon the expiration or termination of an exemption claimed pursuant to section 205(a)(1), (3), or (5), rent charged for a unit may not exceed the following:

(1) For a unit exempted pursuant to section 205(a)(1) or (5):

(A)(i) If the unit is not vacant when the exemption terminates or expires, the sum of the rent charged on the date the unit became exempt and each subsequent adjustment of general applicability authorized pursuant to section 206(b);

(ii) If the unit is vacant when the exemption terminates or expires:

(I) 110% of the sum authorized under sub-sub-paragraph (i) of this subparagraph; or

(II) The amount of rent charged for a substantially identical rental unit in the same housing accommodation; provided, that the increase shall not exceed 30% of the sum authorized under sub-sub-paragraph (i) of this subparagraph; or

(B) In the event that the rent charged on the date the unit became exempt was either not properly filed with the Rent Administrator or is no longer available at the Division, and the housing provider is not able to provide a stamped copy of the original filing demonstrating the rent charged on the date the unit became exempt, the lowest of:

(i) The most recent rent charged on file with the Rent Administrator before the date the unit became exempt, plus each subsequent adjustment of general applicability authorized under section 206(b);

(ii) The applicable Small Area Fair Market Rent for the Washington-Arlington-Alexandria Metropolitan area based on unit size and zip code, as established by the U.S. Department of Housing and Urban Development pursuant to 24 CFR 888.113; or

(iii) The average rent charged during the last 6 consecutive months of the exemption.

(2) For a unit exempted pursuant to section 205(a)(3), up to 105% of the average rent charged during the last 6 consecutive months of the exemption.”.

(a-1) An increase in rent charged pursuant to subsection (a) may be effected only in accordance with the procedures specified in sections 208 and 904.

~~Except as provided in subsection (c) of this section, the rent charged for any rental unit in a housing accommodation exempted by § 42-3502.05 except subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption, increased by no more than 5% of the average rent charged during the last 6 consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in §§ 42-3502.08 and 42-3509.04.~~ charged before One hundred percent

(b) A structure or building, including the land appurtenant, ~~that which~~ is located in the District in which ~~one~~ one or more rental units as defined in § 42-3501.03(33) are established after July 17, 1985, shall subsequently be defined as a “housing accommodation” for the purposes of this chapter. If any rental unit in such a housing accommodation is not otherwise exempted by ~~one~~ one of the provisions of § 42-3502.05, the rent charged for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the housing provider and is considered to be the equivalent of making the computations specified in § 42-3502.06.

~~(c) The rent charged for any rental unit exempted under § 42-3502.05(a)(5) in a housing accommodation by upon the expiration or termination of the exemption shall be the rent charged on the date the unit became exempt plus each subsequent adjustment of general applicability authorized under § 42-3502.06(b).~~

(d) For the purposes of this section, the term “rent charged” means the entire amount of money, money’s worth, benefit, bonus, or gratuity a tenant must actually pay to a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities, pursuant to the Rent Stabilization Program.

ATTACHMENT I


Councilmember Anita Bonds

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AN AMENDMENT

Date: September 24, 2018
Amendment offered by: Anita Bonds
To: B22-00570 – “Rental Housing Affordability Re-establishment Amendment Act of 2018”

Version:	Introduced	_____
	Committee Print	_____ <u>X</u> _____
	First Reading	_____
	Amended First Reading	_____
	Engrossed	_____
	Enrolled	_____
	Unidentified	_____

Amendment 1

Sec. 2, Page 1, Lines 29-33

Section 205(g-1)(1) is amended by striking the phrase “Within 30 days after the expiration or termination of an exemption claimed pursuant to subsection (a) of this section, a housing provider shall file an amended registration statement with the Rent Administrator” and inserting the phrase “After the expiration or termination of an exemption claimed pursuant to subsection (a) of this section, a housing provider shall file, upon the re-renting of the unit, an amended registration statement with the Rent Administrator” in its place.

Rationale:

This amendment simplifies the procedure to ensure that there is record of the previous exempted rent along with the new calculation on file with the Rent Administrator. The new language eliminates the extra step that would be created by the 30-day requirement, and only requires the new registration upon the re-renting of the unit.

Amendment 2

Sec. 2, Page 1, Lines 50-52

Section 209(a)(1)(B) is amended by striking the phrase "Division, the lowest of" and inserting the phrase "Division, and the housing provider is not able to provide a stamped copy of the original filing demonstrating the rent charged on the date the unit became exempt, the lowest of" in its place.

Rationale:

This provides another opportunity for the housing provider to demonstrate the rent charged of the unit on the day the unit became exempt.

1 COMMITTEE PRINT
2 COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATON
3 SEPTEMBER 24, 2018
4 B22-0570
5
6
7

8 A BILL
9
10

11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
12
13

14
15 To amend the Rental Housing Act of 1985 to reset rents of units no longer exempt from
16 the Rent Stabilization Program due to the end of a tenant-based subsidy, to an
17 amount based on the adjustments of general applicability that accrued during the
18 period of exemption, plus one vacancy increase; and to define the term “rent
19 charged” for purposes of calculating baseline rents upon termination of an
20 exemption.
21

22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
23 act may be cited as the “Rental Housing Affordability Re-establishment Amendment Act of
24 2018”.

25 Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C.
26 Official Code § 42-3501.01 *et seq.*) is amended as follows:

27 (a) Section 205 (D.C. Official Code § 42-3502.05) is amended by adding a new
28 subsection (g-1) to read as follows:

29 “(g-1)(1) After the expiration or termination of an exemption claimed pursuant to
30 subsection (a) of this section, a housing provider shall file, upon the re-renting of the unit, an
31 amended registration statement with the Rent Administrator, which shall include the rent charged
32 for the unit, calculated in accordance with the requirements of section 209, and the
33 documentation supporting the calculation.

34 “(2) The notice requirements of subsection (h)(2) of this section shall apply to any
35 amended registration statement filed pursuant to this subsection.”.

36 (b) Section 209 (D.C. Official Code § 42-3502.09) is amended as follows:

37 (1) Subsection (a) is amended to read as follows:

38 “(a) Upon the expiration or termination of an exemption claimed pursuant to section
39 205(a)(1), (3), or (5), rent charged for a unit may not exceed the following:

40 “(1) For a unit exempted pursuant to section 205(a)(1) or (5):

41 “(A)(i) If the unit is not vacant when the exemption terminates or expires,
42 the sum of the rent charged on the date the unit became exempt and each subsequent adjustment
43 of general applicability authorized pursuant to section 206(b);

44 “(ii) If the unit is vacant when the exemption terminates or expires:

45 “(I) 110% of the sum authorized under sub-sub-paragraph
46 (i) of this subparagraph; or

47 “(II) The amount of rent charged for a substantially
48 identical rental unit in the same housing accommodation; provided, that the increase shall not
49 exceed 30% of the sum authorized under sub-sub-paragraph (i) of this subparagraph; or

50 “(B) In the event that the rent charged on the date the unit became exempt
51 was either not properly filed with the Rent Administrator or is no longer available at the
52 Division, and the housing provider is not able to provide a stamped copy of the original filing
53 demonstrating the rent charged on the date the unit became exempt, the lowest of:

54 “(i) The most recent rent charged on file with the Rent
55 Administrator before the date the unit became exempt, plus each subsequent adjustment of

56 general applicability authorized under section 206(b);

57 “(ii) The applicable Small Area Fair Market Rent for the
58 Washington-Arlington-Alexandria Metropolitan area based on unit size and zip code, as
59 established by the U.S. Department of Housing and Urban Development pursuant to 24 CFR
60 888.113; or

61 “(iii) The average rent charged during the last 6 consecutive
62 months of the exemption.

63 “(2) For a unit exempted pursuant to section 205(a)(3), up to 105% of the average
64 rent charged during the last 6 consecutive months of the exemption.”.

65 (2) A new subsection (a-1) is added to read as follows:

66 “(a-1) An increase in rent charged pursuant to subsection (a) may be effected only in
67 accordance with the procedures specified in sections 208 and 904.”.

68 (3) Subsection (b) is amended as follows:

69 (A) Strike the phrase “, which” and insert the phrase “, that” in its place.

70 (B) Strike the phrase “in which 1” and insert the phrase “in which one” in
71 its place.

72 (C) Strike the phrase “by 1 of” and insert the phrase “by one of” in its
73 place.

74 (4) Subsection (c) is repealed.

75 (5) A new subsection (d) is added to read as follows:

76 “(d) For the purposes of this section, the term “rent charged” means the entire amount of
77 money, money’s worth, benefit, bonus, or gratuity a tenant must actually pay to a housing

provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities, pursuant to the Rent Stabilization Program.”.

Sec. 3. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.